

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 20861
[Redacted],	)	
	)	DECISION
Petitioner.	)	
_____	)	

On November 5, 2007, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer) proposing income tax, penalty, and interest for the taxable years 2001 through 2005 in the total amount of \$6,855.

On January 4, 2008, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not respond to the Tax Commission's hearing rights letter and has not provided any further additional information. The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) received information that showed that the taxpayer may have had a requirement to file Idaho individual income tax returns for the tax years 2001 through 2005. The Bureau researched the Tax Commission's records and found that the taxpayer did not file income tax returns for those years. The Bureau sent the taxpayer a letter asking about his requirement to file Idaho income tax returns. The taxpayer responded stating that he owned property in Idaho but did not live in Idaho until August 2006. He stated he worked and lived in [Redacted]. The Bureau obtained additional information from the county assessor and determined more information was needed from the taxpayer. The Bureau sent the taxpayer a domicile questionnaire but did not receive a response. The Bureau requested and received information [Redacted] and based on all the information available determined the

taxpayer was required to file Idaho individual income tax returns. The Bureau prepared returns for the taxpayer and sent him a Notice of Deficiency Determination.

The taxpayer protested the Bureau's determination and sent the Bureau a packet of information showing that he lived in [Redacted] for part of the years and never lived in Idaho for a full year. The Bureau reviewed the information and found that it supported the Bureau's assertion that the taxpayer was domiciled in Idaho during the years 2002 through 2005. The Bureau sent the taxpayer a letter stating that, based on the information provided, the Notice of Deficiency Determination for 2001 should be cancelled, but the Notice of Deficiency Determination for the other years remain, unchanged. The Bureau stated the evidence that showed the taxpayer's domicile was Idaho and provided the taxpayer with the opportunity to withdraw his appeal. The taxpayer failed to respond, so the Bureau referred the matter for administrative review.

The Tax Commission reviewed the matter and sent the taxpayer a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. The taxpayer did not respond, so the Tax Commission sent the taxpayer a follow-up letter. The taxpayer still failed to respond; therefore, the Tax Commission decided the matter based upon the information available.

In December 2001, the taxpayer purchased a house [Redacted]. He moved into the house [Redacted] later that month. The taxpayer applied for and received the homeowner's exemption on the house effective for the 2002 year. The taxpayer acquired an Idaho driver's license in 2002, and he registered several vehicles in Idaho in 2002 through 2004. The taxpayer's daughter attended Idaho schools, and the taxpayer filed his federal income tax returns with the [Redacted]Idaho, address.

The taxpayer stated that his relationship with his daughter's mother was "very rocky." He stated that although his daughter and her mother lived in the [Redacted] house during the years in question, he did not live in the house for an entire year. The taxpayer provided dates when he was either living [Redacted] in [Redacted] [Redacted], or at the [Redacted]house. The taxpayer stated that even though the [Redacted] house was his house, he chose to leave during the rough times of the relationship so that his daughter could continue to attend familiar schools. The information the taxpayer provided showed that between January 2002 and April 2004 the taxpayer lived in Idaho a total of 12 months and in [Redacted] a total of 16 months. None of this time was continuous in either state. The taxpayer stated that after April 2004 he was in and out of the [Redacted] house, he just did not have the exact dates. Each time the taxpayer left Idaho he went to live [Redacted] in [Redacted]. It was not until August 2006 that the taxpayer regained the occupancy of his house by court order.

Idaho Code section 63-3002 states the intent of the Idaho legislature regarding the Idaho income tax act to impose a tax on residents of Idaho measured by their taxable income from all sources. Idaho Code section 63-3013 defines a resident of Idaho as any individual who is domiciled in Idaho; or who maintains a place of abode in Idaho for the entire year and spends more than 270 days of the taxable year in Idaho.

Domicile is defined in Idaho's administrative rules as the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has the intention of returning whenever he is absent. Domicile, once established, is never lost until there is a concurrence of a specific intent to abandon the old domicile, intent to acquire a specific new domicile, and actual physical presence in the new domicile. (IDAPA 35.01.01.030 Income Tax Administrative Rules.) Once a domicile of choice is established, it persists until another is

legally acquired. In re Cooke's Estate, 96 Idaho 48, 59, 524 P.2d 176 (1973). "The existing domicile, whether of origin or selection, continues until a new one is acquired, and the burden of proof rests upon the party who alleges the change." Bodfish v. Gallman, 378 N.Y.S. 2d 138, 141, 50 A.D.2d 457 (1976).

The taxpayer purchased a house and moved to Idaho in December 2001. In 2002, the taxpayer acquired an Idaho driver's license, registered vehicles in Idaho, and applied for the homeowner's exemption. These actions show the taxpayer's intent to abandon his old domicile, Washington, and acquire a new domicile, Idaho. The taxpayer was physically present in Idaho until June 11, 2002. This was the start of the taxpayer being in and out of Idaho due to his rocky relationship with his daughter's mother. Even though the taxpayer was not physically present in Idaho the entire time between January 2002 and August 2006, there is no indication the taxpayer ever abandoned Idaho as his domicile once he acquired it in 2001.

It takes no particular period of time to acquire a new domicile, the result being achieved when the person is physically present in the new place with a state of mind regarding the new place as home. Moreover, mere length of time cannot convert physical presence or residence into domicile. Taylor v. Milam, 89 F.Supp. 880 (1950). Domicile is not necessarily lost by protracted absence from home where the intention to return remains. Wilson v. Pickens, 444 F. Supp. 53 (W.D. Okl. 1977). The taxpayer's absences from Idaho were for periods from six to seven months. After each of the absences, the taxpayer returned to Idaho with the apparent intent to stay indefinitely. However, because of the rocky nature of his relationship with his daughter's mother, the taxpayer's stays in Idaho were temporary until he regained possession of his house by court order.

The presumption is that when the taxpayer acquired Idaho as his domicile, it continues until he establishes a new domicile. In re Cooke's Estate, supra. The taxpayer did not show that he acquired new domiciles during his periods of absence. The evidence provided shows that the taxpayer lived [Redacted] in Washington during these periods and that he used his [Redacted] address. However, there is nothing that shows there was any permanence associated with his living in Washington. The taxpayer always maintained his Idaho ties while in Washington. Therefore, the Tax Commission finds that the taxpayer was domiciled in Idaho beginning in December 2001 and continued through 2005 and, as such, was required to file Idaho individual income tax returns for the tax years 2001 through 2005.

However, for 2001, the taxpayer's income, for the time that he was domiciled in Idaho, was less than the amount required for filing a return. Therefore, the Tax Commission agrees with the Bureau that the 2001 Notice of Deficiency Determination should be cancelled.

The Tax Commission reviewed the other years' returns the Bureau prepared and found them to be an accurate representation of the taxpayer's taxable income. Therefore, the Tax Commission hereby upholds the Bureau's determination.

The Bureau added interest and penalty to the taxpayer's Idaho tax liability. The Tax Commission reviewed those additions and found them appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated November 5, 2007, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest (computed to October 15, 2008):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2002	\$1,508	\$377	\$514	\$2,399
2003	898	225	258	1,381
2004	1,002	251	228	1,481
2005	316	79	53	448
			TOTAL DUE	<u>\$5,709</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

### **CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.  
  
\_\_\_\_\_